

2/28/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 15
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Carinhoso Globo B.V.

Serial No. 75/424,744

Guy D. Yale of Alix, Yale & Ristas, LLP for Carinhoso Globo B.V.

Jeri J. Fickes, Trademark Examining Attorney, Law Office 108
(Dave Shallant, Managing Attorney).

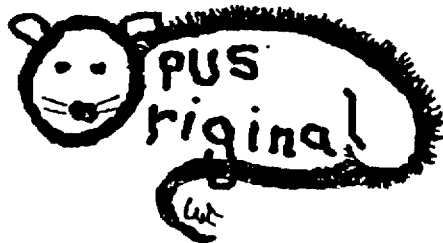
Before Hanak, Holtzman and Rogers, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Carinhoso Globo B.V. has appealed from the final refusal of the Trademark Examining Attorney to register the typed mark OPPUS for goods which were subsequently amended to "shoes and boots for daily wear."¹

¹ Application Serial No. 75/424,744, filed January 28, 1998, based upon a foreign registration under Section 44(e) of the Trademark Act and alleging a bona fide intention to use the mark in commerce.

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the basis of Registration No. 2,172,883 for the mark shown below for "neckties":²



When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of

² Issued July 14, 1998. We additionally note that previously-cited Registration No. 1,687,924 was cancelled by the Office on November 24, 1998. The Examining Attorney withdrew the refusal based on this registration on March 8, 2000.

differences in the essential characteristics of the goods and differences in the marks.").

With that in mind, we turn our attention to the marks. The Examining Attorney argues in this regard that applicant's mark OPPUS and the "dominant literal element" of registrant's mark, i.e., OPUS are similar in sound and commercial impression. The Examining Attorney maintains that the design in registrant's mark, regardless of its characterization as an opossum or another animal, "does not obviate [the] likelihood of confusion."

Applicant, on the other hand, argues that the marks are different in sound, appearance and commercial impression, and that the Examining Attorney, in deciding otherwise, has not considered the marks in their entirety. Applicant contends that it is the highly distinctive "opossum" design which creates the strongest impression in registrant's mark and that the word OPUS is a shortened reference to that animal.

While marks must be compared in their entirety, one feature of a mark may have more significance than another, and in such a case there is nothing improper in giving greater weight to the dominant feature. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). We agree with the Examining Attorney that the term OPPUS in applicant's mark and word OPUS, the strongest literal portion of registrant's mark, are similar in sound. The word ORIGINAL, being laudatory in nature, would

not be particularly significant to consumers as an indication of source. However, the marks are radically different in appearance, and we believe that the Examining Attorney has given insufficient weight to the design element in registrant's mark and its effect on the connotation of registrant's mark. We find that when we compare the marks in their entirety, giving appropriate weight to that feature of registrant's mark, the marks are radically different in appearance and connotation, thus they create different commercial impressions.

The visual differences in the marks are obvious. Applicant's mark is solely the typed word OPPUS. Registrant's mark, on the other hand, is a composite consisting of the words OPUS ORIGINAL integrated within the design of what appears to be a furry animal, perhaps in the nature of a cat, or in applicant's view, an opossum. Whatever the nature of the animal, both the words and the design in registrant's mark must be considered in determining the overall meaning and commercial impression the mark conveys.

The word "opus" has the dictionary meaning of a "work," usually of a musical, literary or artistic nature.³ Consumers who are familiar with this meaning will probably ascribe that same meaning to applicant's mark OPPUS, as simply a misspelling

³ See, e.g., *Websters Encyclopedic Unabridged Dictionary of the English Language* (1996), of which we have taken judicial notice.

of the dictionary word "opus." Those who are not familiar with the dictionary meaning of "opus" would probably assume OPPUS is a coined or invented term with no known meaning. Either way, the use of OPUS in the context of registrant's mark suggests something entirely different. Purchasers, upon viewing OPUS ORIGINAL in registrant's design, are likely to believe that OPUS identifies either a totally whimsical creature called "an opus," thereby conveying the fanciful impression that registrant's neckties are an original creation of this "opus" creature, or a character name for the animal, such as Opus Opossum or Opus the Cat. Regardless of which impression is conveyed, it differs from the commercial impression engendered by applicant's mark.⁴

In view of these differences in the marks, the question is whether neckties and shoes are so closely related that use of the respective marks on those goods would nonetheless, be likely to cause confusion. The Examining Attorney argues that applicant's

⁴ The Examining Attorney's statement regarding the scope of protection accorded a typed mark is incorrect. A typed drawing allows protection for all *reasonable* manners of presentation. See Phillips Petroleum Co. v. C. J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35 (CCPA 1971) and INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992). This is so because rights in the typed word reside in the word itself not in any particular display of the term. Thus, rights in the term would not be extended to include protection for that word combined with other matter such as a design element or additional wording. See Fossil Inc. v. Fossil Group, 49 USPQ2d 1451 (TTAB 1998) and In re Pollio Dairy Products Corp., Inc., 8 USPQ2d 2012 (TTAB 1988). Consequently, it would not be reasonable to assume that applicant's mark OPPUS would be presented with the design element appearing in registrant's mark.

shoes and boots and registrant's neckties are both apparel items which are purchased by the same consumers within the same department stores or boutiques. In support of her position that the goods are related, the Examining Attorney has relied on three third-party applications and three third-party registrations, two of which are based on foreign registrations, covering both types of goods under the same mark.

Applicant, on the other hand, maintains that while shoes and boots and neckties "are often worn together and may be found in the same channels of trade" these goods are not necessarily related. Applicant argues that the goods are "dissimilar" in that applicant's goods are made of leather and rugged materials, while neckties are "soft goods" made of fabrics such as silk.

There is obviously some relationship between shoes and neckties. They are complementary articles of everyday men's apparel which are purchased and worn together (in fact ties would probably never be worn without shoes) and which are sold in the same channels of trade to the same classes of customers. However, the degree of relatedness between these products is not clear on this record. While third-party registrations are not evidence of use, they may be used to show that the respective goods are of a type which may emanate from the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Here, however, the third-party registrations and applications are

not helpful in this determination. Two of the three identified registrations issued on the basis of foreign registrations rather than on use in commerce and the three pending applications are not evidence of anything. See, e.g., *In re Albert Trostel & Sons Co.*, *supra*. We cannot conclude on the basis of one third-party registration that shoes and neckties are so closely related that purchasers would naturally expect these two products to emanate from the same source.

Considering the differences in the marks, and the differences in the goods, and the fact that the goods are, at most, only somewhat related, we find that there is no likelihood of confusion.

Decision: The refusal to register is reversed.